

## Standard Form of Agreement Between Contractor and Subcontractor

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AGREEMENT made as of the 21st day of February in the year of Two Thousand And Twenty Four .

**BETWEEN** the Contractor (Contractor):  
(Name and address)

Prosser Wilbert Construction Inc  
13730 W 108th St  
Lenexa, Kansas 66215

and the Subcontractor:  
(Name and address)

Overland Park Mechanical Co LL  
16088 Foster Street  
Overland Park, Kansas 66085

Contractor has made a contract for construction dated the 5th day of February, Two Thousand And Twenty Four with

The Owner  
(Name and location)

SWP XIII, LLC  
7200 West 132nd Street, Suite 150  
Overland Park, Kansas 66213

For the following Project:  
(Name and address)

Streets West Pryor Lot 13  
1020 NW Pryor Road  
Lee's Summit, Missouri 64081

which Contract is hereinafter referred to as the Prime Contract and which provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein has been made available to the Subcontractor.

The Architect for the Project is:  
(Name and address)

Schwerdt Design Group  
2231 SW Wanamaker Rd. Suite 303  
Topeka, Kansas 66614

Contractor and Subcontractor agree as set forth below.

**ARTICLE 1**  
**Complete Agreement**

The Contract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein, including Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Agreement between the Owner and Contractor and Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement, and other Contract Documents, if any, listed in the Owner-Contractor Agreement; (3) Modifications to this Subcontract issued after execution of this Agreement and (4) Exhibit A (Contract Documents Log), (5) Exhibit B (Scope of Work), (6) Exhibit C "Insurance" (7) AIA Document Forms G702 and G703 (Application and Certificate for Payment and Continuation Sheet), (8) Exhibit E "Affidavit" (9) Exhibit F "Partial and Final Lien Waiver Form", and (10) W-9 Form (Request for Taxpayer Identification Number and Certification), (11) I-9 verification form, (12) Performance and Payment bond forms (if applicable). These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. This Subcontract contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties, or other matters, oral or written, shall be deemed to bind the parties hereto. No change, variation or alteration of the terms of this Agreement shall be binding unless the same be reduced to writing and executed by an authorized representative of each of the parties. Nothing contained in the Subcontract shall create any contractual or third party beneficiary relationship between any parties other than Contractor and Subcontractor.

**ARTICLE 2**  
**The Work**

Subcontractor shall perform all work and shall furnish all supervision, labor, materials, plant, scaffolding, hoists, tools, equipment, supplies and all other things necessary for the construction and completion of the work described in Exhibit B and work incidental hereto, in strict accordance and full compliance with the terms of the Prime Contract and this Subcontract, and to the satisfaction of Contractor and Owner.

**ARTICLE 3**  
**Time of Work**

Time is of essence and the Subcontractor will proceed with the work in a prompt and diligent manner, in accordance with Contractor's schedule as reasonably amended from time to time.

**ARTICLE 4**  
**The Contract Amount**

Contractor shall pay Subcontractor for performances of the work, subject to additions and deductions by change order or other Subcontract provisions, the total sum of **One Hundred Fifty-One Thousand Nine Hundred Sixty-Eight Dollars And Zero Cents (\$151,968.00)**, including tax, provided, however, that no payments are to be made to the Subcontractor until the occurrence of the following conditions precedent to Subcontractor's right to payment: (1) Subcontractor's rate of progress, work done and materials and services furnished are satisfactory to the Owner and Contractor; (2) work for which payment is requested has actually been performed to the satisfaction of the Owner and Contractor and (3) payments for Subcontractor's work have actually been received by Contractor from Owner. Subcontractor hereby assumes the risk of nonpayment by the Owner for any and all reasons. Contractor shall be required only to make a good faith effort to obtain prompt payment from the Owner. Contractor is required to make payment to Subcontractor if, and only if, Owner has made payment to Contractor for Subcontractor's work.

**ARTICLE 5**  
**Performance and Payment Bonds**

Performance and Payment Bonds (~~ARE~~/ARE NOT) required per this contract.

Immediately upon receipt of this Subcontract, Subcontractor shall at the expense of Subcontractor, furnish to Contractor performance bonds in the form as shown in the contract documents with Contractor named as obligee in a sum equal to that payable herein to Subcontractor under this Subcontract with surety thereon satisfactory to Contractor for the faithful performance of this Subcontract and each and all of its stipulations and agreements. Also immediately upon receipt of this Subcontract, Subcontractor shall also furnish at the expense of Subcontractor, payment bonds in the form attached hereto (Exhibit F) with Contractor named as obligee in a sum equal to that payable herein to Subcontractor under this Subcontract with surety thereon satisfactory to Contractor for the payment of all persons furnishing labor, services, equipment or materials used or purchased for use in the work covered by this Subcontract. The subcontractor's surety shall be rated at least "A-" by A. M. Best Company. The subcontractor's surety shall be recognized under the Department of the Treasury's Listing of Approved Sureties. The subcontractor's surety shall be licensed in the state where the bonded project is located. Should any contract modifications result in an increase in the amount of this Subcontract, Subcontractor shall increase the amounts of such bonds accordingly, and it will be the responsibility of the Subcontractor to include in its proposal the cost of additional bond premiums to cover the additional amount. Anything herein to the contrary notwithstanding, if the Subcontractor fails to furnish said bonds before commencing work hereunder, or to increase the amounts of such bonds as required when there shall be an increase in the amount of this Subcontract, Contractor then or at any time thereafter shall be justified in declaring Subcontractor to be in default hereunder and to have breached this Subcontract.

If Subcontractor has not been required to furnish bonds or if Contractor desires Subcontractor to provide additional bond coverage, Contractor may, at any time upon written request, instruct Subcontractor to provide within ten (10) days performance or payment bonds, in a form and from a surety acceptable to Contractor, in an amount up to the then current full value of this Subcontract. In this event, Contractor will reimburse Subcontractor the amount of the bond cost.

**ARTICLE 6**  
**Subcontractor's Insurance**

Prior to commencing work, Subcontractor shall procure and thereafter maintain, at its own expense, until one year elapses from the date of final acceptance of the work, insurance coverage in a form, in amounts, and from insurers required by Contractor and acceptable to Contractor. Contractor and Owner shall be named as additional insureds on each insurance policy, except for Workmen's Compensation. Subcontractor shall furnish to Contractor certificates bearing the certification of the insuring companies, showing the required coverage and stating that the policies described therein will not be altered, canceled, or permitted to expire without first giving thirty (30) days prior written notice thereof to Contractor.

**GENERAL CONDITIONS**

**ARTICLE 7**  
**Subcontractor's Work**

7.1. Subcontractor represents that it has the machinery, equipment, personnel and experience necessary for the performance of those portions of the work herein subcontracted to the Subcontractor within the time allotted as provided in the Prime Contract or as otherwise directed or scheduled by Contractor.

7.2. In respect of work covered by this Subcontract, Subcontractor agrees to be bound to Contractor by all the terms of the Prime Contract, and Subcontractor shall assume all obligations, risks and responsibilities which Contractor has assumed towards Owner in the Prime Contract. It is the intent of this agreement that Contractor shall be relieved of all responsibility under the Prime Contract for the performance of all things herein subcontracted to Subcontractor and that Subcontractor shall fully assume and perform all such responsibilities of Contractor. The Subcontractor agrees that it will so perform this Subcontract as not to violate any terms, covenants or conditions of the Prime Contract. Subcontractor shall have the right to enforce its rights and remedies, and to defend against claims against it by the Owner, as provided in Article 14.

7.3. All of the Work shall be performed in accordance with all the contract drawings and specifications and any addenda and modifications thereto, according to the true intent and meaning of the Contract Documents including all labor, material, and engineering incident thereto, or as are usually performed or furnished in connection with such work, and regardless of whether the labor or materials hereby subcontracted are referred to under one or more headings in the specifications, it being the intention of the parties that all work usually performed by the trade(s) covered by this Subcontract and required by the Prime Contract shall be performed by the Subcontractor.

7.4. Should it appear that the Work hereby intended to be done or the material to be furnished, or any of the matters relating to said Work or materials, are not sufficiently detailed or explained on the drawings or in the specifications, the Subcontractor shall apply to Contractor for such other and further drawings or explanations as may be necessary, and shall conform to the same without extra compensation as part of this Subcontract.

7.5. Subcontractor shall at all times supply adequate tools and equipment, a sufficient number of properly qualified workers and sufficient amount of materials and supplies of proper quality to prosecute said work efficiently and promptly, and in accordance with the schedule and sequence given it by Contractor from time to time. If in order to expedite the final completion of the work, Contractor requests Subcontractor to work overtime at a time when Subcontractor is not in default under any of the provisions of this Subcontract, Subcontractor agrees to work said overtime and it is understood that Contractor shall pay Subcontractor, therefore, only the Subcontractor's premium pay over the rate for regular time during the period of such overtime, including additional insurance and taxes incurred by Subcontractor with respect thereto. Time slips covering said overtime must be submitted to Contractor's authorized agent for checking and approval.

7.6. Subcontractor accepts sole and exclusive responsibility for the work covered hereby, shall provide continuous supervision for such work during the progress thereof at the job site, and no advice, recommendations or assistance that representatives of the Owner or Contractor may give to Subcontractor shall operate to relieve Subcontractor from complete responsibility for such work.

**ARTICLE 8**  
**Payment**

8.1. Provided Applications for Payment are submitted to Contractor not later than the 20, on AIA Documents G702 and G703, the Contractor shall make payment to Subcontractor not later than 7 days after receipt of payment from owner. Each progress payment shall be computed as follows: Sum properly allocable to completed Work, less retainage of Ten percent (10.0%). If the Prime Contract has regulations and requirements concerning payroll submittals and reports, it is a requirement hereunder that the

Subcontractor provide adequate and satisfactory facilities for such requirements and regulations and that it meticulously comply with them.

8.2. Subcontractor shall not be entitled to receive any payment under this Subcontract until the following conditions precedent to Subcontractor's right to payment have occurred: (1) Subcontractor has submitted to Contractor application for payments together with all data required by Contractor in a manner acceptable to Contractor and in such reasonable time as to enable Contractor to apply for payment on the basis of Subcontractor's work within the time specified under the Prime Contract, and (2) Contractor has actually received payment from the Owner for Subcontractor's work. No partial payment made under this Subcontract shall be considered an acceptance of work, in whole or in part.

8.3. Subcontractor shall insure that all subcontractors, employees and suppliers, at all times, are paid all amounts due in connection with the performance of the Subcontract. After partial payment hereunder, Contractor shall have the right to withhold any subsequent partial payments until Subcontractor submits evidence satisfactory to Contractor that all amounts owed in connection with performance of this Subcontract have been paid. Further, Subcontractor agrees that Contractor may pay all persons that have not been paid the monies due them in connection with this Subcontract, whether or not a lien has been filed, and Subcontractor shall, to the extent that Contractor has not recovered said amounts pursuant to withholding, pay said amounts to Contractor upon demand. Subcontractor shall also immediately reimburse Contractor for any amounts paid under Contractor's payment bond in connection with this Subcontract and indemnified by Contractor. In the event Contractor is required to pay or indemnify any person hereunder, Subcontractor shall immediately reimburse Contractor for the full cost thereof.

8.4. All material and work covered by partial payments shall become the property of Contractor, or, if the Prime Contract so provides, the property of Owner; however, this provision shall not relieve Subcontractor from the sole responsibility and liability for all work and materials upon which payments have been made until final acceptance thereof by Owner.

8.5. Contractor may withhold amounts otherwise due under this Subcontract or any other contractual arrangements between the parties to cover Contractor's reasonable estimate of any damages, costs or liability Contractor has incurred or may incur for which Subcontractor may be responsible. Appropriate adjustments to withholdings shall be made when the exact amounts owed under this Subcontract Agreement are determined.

8.6. Subcontractor shall not be entitled to receive final payment under this Subcontract or on the Project until the occurrence of the following conditions precedent: (a) the project has been completed; (b) Contractor has received written acceptance of completion of the project by the Owner; (c) a complete release of any and all claims against Owner, Contractor and the Project has been delivered by Subcontractor to Contractor; (d) Contractor has received from Subcontractor all written warranties and guaranties that the Subcontractor is required to furnish; (e) submission of evidence satisfactory to Contractor that Subcontractor has paid in full all labor, materials, equipment and supplies used in the work and performed all other obligations incumbent on the Subcontractor hereunder to said date; and (f) receipt by Contractor of full and final payment by the Owner. Final payment, subject to withholdings hereunder shall be made within thirty (30) days after the occurrence of all conditions precedent to Subcontractor's right to payment.

8.7. The Subcontractor agrees that monies received for the performance of this Subcontract shall be used first for payment of labor, material, equipment, supplies and services entering into this work, and said monies shall not be diverted to satisfy obligations of the Subcontractor on other contracts until all obligations under or in connection with this Subcontract are satisfied in full. Contractor also has the absolute right at its sole option to issue joint checks to Subcontractor and any unpaid supplier or subcontractor of Subcontractor for sums claimed by said supplier or subcontractor and such payments shall be reduced from sums otherwise due Subcontractor. Subcontractor hereby grants Contractor a paramount lien upon all materials, tools, supplies, appliances and equipment of the Subcontractor at or near the site of said Project or used in connection with said work, as security for performance of this Subcontract and every part thereof.

8.8. The acceptance of releases by Contractor shall not relieve Subcontractor from any liability for defects in Subcontractor's work which may thereafter be discovered or from its other warranty obligations.

8.9. In no event shall payment, whether on account or final, be deemed to constitute acceptance or approval of work done or materials furnished hereunder. Neither shall prior passage of title thereto unto the Owner or Contractor, prior receipts therefore acknowledged by the Owner or Contractor as being in good condition, prior payment by the Owner or Contractor or acceptance, use or installation of any work performed or articles delivered hereunder (i) affect the responsibility of the Subcontractor to perform as required, (ii) affect the right of Contractor or Owner to reject any such work or articles determined upon inspection not to be in the condition required, or (iii) be construed as acceptance of defective work or improper materials or as a waiver of Contractor's rights and Subcontractor's obligations hereunder. Without limitation on the foregoing, any acceptance of the work and materials furnished by Subcontractor hereunder shall not relieve or discharge Subcontractor from any of its obligations and warranties hereunder.

8.10. If any payment from the Owner to Contractor is delayed due to any fault of Subcontractor, including Subcontractor's failure to settle any or all claims against it for materials or work under this Subcontract, or Subcontractor's failure to perform fully and completely or to comply with any condition or requirement incumbent on it hereunder or for any other reason attributable to Subcontractor, then Subcontractor will be assessed interest, at the then prevailing prime rate as published in the "Money Rates" section of the Wall Street Journal, plus two percent (2%) on the total amount due Contractor from the Owner. Notwithstanding anything herein to the contrary, Contractor has the absolute right to withhold and set off from funds otherwise due Subcontractor on this Project any

amounts due Contractor from Subcontractor on any other project and, if Contractor exercises such right of setoff, then Subcontractor hereby waives any lien claims and bond rights on this Project as to such amounts so set off.

8.11. Subcontractor/Suppliers are to submit Exhibit "E" Affidavit listing all material suppliers and subcontractors used on the project. Provide completed affidavit with each application for payment. Affidavit to be notarized by notary public as a sworn signature that all suppliers and subcontractors furnishing material, labor, and equipment on the project are listed with correct dollar amounts. Payments to subcontractors to be withheld if affidavit is not completed and returned with supplier lien waivers.

**ARTICLE 9**  
Subcontractor's Investigation and  
Representations

Subcontractor represents that it is fully qualified to perform this Subcontract, and acknowledges that, prior to the execution of this Subcontract, it has (a) by its own independent investigation ascertained (i) the work required by this Subcontract, (ii) the conditions involved in performing the work, (iii) the obligations of this Subcontract and the Prime Contract, and (iv) the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed; and (b) verified all information furnished by Contractor or others satisfying itself as to the correctness and accuracy of that information. The Subcontractor represents and agrees that it enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of Contractor, or the Owner, or of any of their respective officers, agents, or employees. Any failure by Subcontractor to independently investigate and become fully informed will not relieve Subcontractor from its responsibilities hereunder.

**ARTICLE 10**  
Subcontractor Liability

10.1. Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, hoists, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the work by Owner. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost. In the event of a loss by fire of casualty, the Subcontractor shall, as soon as possible thereafter, proceed to replace, restore or repair the portion of its work so damaged as directed by Contractor, and Subcontractor shall forthwith submit to Contractor its estimate of the cost of work, in such form as may be required to submit a proper proof of claim to the insurance carrier, and in the event of any dispute with the carrier as to the claim involving the work and cost of the Subcontractor, the Subcontractor shall fully cooperate with Contractor in any proceedings for settlement, arbitration, appraisal, or legal action in the presentation of its part of the claim, and the Subcontractor shall be conclusively bound by any such settlement, arbitration, appraisal or legal action in the determination of Subcontractor's part of the total claim.

10.2. Subcontractor agrees that the damage provision of the Prime Contract, both actual and liquidated, shall be enforceable by Contractor against Subcontractor. The Subcontractor shall be responsible for liquidated damages to the extent provided for in the Contract Documents for delays caused by or contributed to by the Subcontractor, the Subcontractor's employees and agents, sub-subcontractors, suppliers or any other person or entity for whose acts the Subcontractor may be liable, including all or a portion of any liquidated damages assessed by the Owner against Contractor attributable in whole or in part to such Subcontractor caused delays. In addition, Subcontractor shall be liable to Contractor for all costs and damages Contractor incurs as a result of Subcontractor's failure to perform this Subcontract in accordance with its terms. Subcontractor's failure to perform shall include the failure of its suppliers and/or subcontractors of any tier to perform. Subcontractor's liability shall include, but not be limited to, (1) damages and other delay costs payable by Contractor to Owner; (2) Contractor's damages and increased costs of performance, such as extended overhead and increased performance costs resulting from Subcontractor-caused delays or improper Subcontractor work; (3) warranty and rework costs; (4) liability to third parties; (5) excess costs; and (6) attorney's fees and related costs.

10.3. Contractor can offset from sums otherwise due Subcontractor for an amount equal to the damage sustained by Contractor as a result of the failure of Subcontractor to perform its work properly, timely or in accordance with its obligations and requirements. In addition, Subcontractor shall indemnify, defend and save harmless Contractor from all loss, cost, damage, liability and expense that Contractor may sustain or incur by reason of any delays caused or contributed to by the Subcontractor, its agents, representatives sub-subcontractors, or suppliers.

10.4. Subcontractor agrees to protect, indemnify, defend and hold harmless Contractor and Owner from and against: (a) all claims, causes of action, liabilities, obligations, demands, costs and expenses arising out of injury to (including death of) any and all persons or damages to property alleged to have been caused by any act or omission of Subcontractor, his agents, employees or invitees, or growing out of or incidental, directly or indirectly, to the performance of this Subcontract regardless of how such injury, death or damage be caused; and (b) all damage, judgments and expenses caused by any act or omission (whether or not negligent) of Subcontractor or anyone who performs work or services in the prosecution of the Subcontract. Subcontractor expressly assumes with respect to the work to be done hereunder all the liability imposed on Contractor by the provisions of the Prime Contract and Subcontractor shall defend all suits brought against Contractor or Owner on account of any such liability or claims of liability and shall pay any settlements made or judgments rendered with respect thereto, and shall reimburse and indemnify Contractor for all expenditures or expenses, including court costs and attorney's fees made, or incurred, by Contractor by reason of any such accident, liability or claims of liability. If there are any such injuries to persons or damage to property unsettled upon completion of this

Subcontract, final settlement between Contractor and Subcontractor may be deferred at the option of Contractor until such claims are adjusted or suitable indemnity acceptable to Contractor is furnished by the Subcontractor.

10.5. In the event that Subcontractor or any of its agents, employees, suppliers, or lower-tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Contractor, Subcontractor shall be liable to Contractor for any loss or damage (including personal injury or death) that may arise from such use, except where such loss or damage shall be due solely to the negligence of Contractor employees operating Contractor-owned or Contractor-leased equipment.

10.6. Subcontractor's assumption of liability is independent from, and not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to Article 6, or otherwise. All amounts owed by Subcontractor to Contractor as a result of the liability provisions of this Subcontract shall be paid upon demand.

10.7. Subcontractor's liability for Contractor's costs, under this or any other Article, shall include a 10% markup. This markup is not a penalty but is established as liquidated damages to compensate Contractor for its administrative costs and to allow Contractor a reasonable profit on work which Contractor must perform as a result of Subcontractor's failure to properly perform.

10.8. Without limitation on the foregoing, Subcontractor shall protect, defend, save harmless and indemnify Contractor for all loss, cost, delay, liability, damage, liquidated or otherwise, and expense, including attorney's fees, which Contractor may sustain, have assessed or incur in consequence of (1) any litigation, dispute or claim with respect to all or any part of the scope of this Subcontract, (2) anything done or omitted or claimed to have been done or omitted by Subcontractor, its agents, representatives, subcontractors, or anyone acting for Subcontractor with respect to this Subcontract or the construction of the Project, or (3) any damage or claims of damage by reason of the failure of Subcontractor to perform promptly and satisfactorily its obligations hereunder. Subcontractor's obligations to Contractor under this Subcontract and all terms thereof shall survive final payment to Subcontractor.

10.9. In the event Contractor employs attorneys or incurs other expense it may deem necessary to protect or enforce its rights under this Subcontract (or in connection with any work done or agreed to be done by Subcontractor on the Project) or to collect damages for the breach of this Subcontract, or to recover on the surety bond given by Subcontractor under this Subcontract, Subcontractor and the surety, if any, on its bond, jointly and severally agree to pay the attorney's fees and expenses so incurred by Contractor. Also, wherever in this Subcontract, Subcontractor agrees to pay costs, charges or expenses incurred by Contractor, such costs, charges or expenses shall include, but are not limited to, attorney's fees incurred by Contractor.

## ARTICLE 11 Time of Performance

11.1. If requested by Contractor, Subcontractor shall submit any and all data and information required under the Prime Contract or requested by Contractor relating to the order, sequence of, the nature of and data pertaining to work to be performed hereunder, or a detailed schedule for performance of the Subcontract, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Prime Contract and of Article 3 above. Subcontractor understands and agrees that Contractor will rely on such data and Subcontractor will perform its work timely in accordance therewith. In the event Subcontractor fails to carry on such work at such rates of progress as required under the terms hereof, Contractor may, at its option, require the Subcontractor to increase the number of workers and the amount of equipment employed in the performance of Subcontractor's work to such extent as Contractor may deem necessary or desirable, or Contractor may exercise any other right or remedy including, but not limited to, the termination of this Subcontract for default of the Subcontractor.

11.2. Contractor may, at its sole discretion, direct Subcontractor to make modifications and revisions in the construction schedule, suspend, delay or accelerate, in whole or in part, the commencement or execution of Subcontractor's Work, or vary the sequence thereof, without compensation to the Subcontractor. In the event such a delay or suspension extends the overall time of performance, or should the Subcontractor be delayed by the act or omission of Contractor or by any other contractor or subcontractor on the Project, or by any cause beyond the Subcontractor's control and not due to any fault, act or omission on its part, then Subcontractor shall only be entitled to an extension of time for performing and completing the work covered by this Subcontract upon the same terms and conditions that an extension of time is allowable, and only to the extent actually allowed, to Contractor by the Owner or its representative under the terms of the Prime Contract. Such extension of time shall be the Subcontractor's sole and exclusive remedy for any delay, and the Subcontractor shall have no claim for damages against Contractor for any delay. Contractor shall not be liable to the Subcontractor for delay to Subcontractor's work for any reason, it being expressly understood that the only obligation Contractor has to Subcontractor is to pass on to the Owner and to pay to Subcontractor any amounts which the Owner pays to Contractor as a result of such claims for Owner caused delays, provided further that an extension of time, or damages, even if otherwise recoverable under the Prime Contract or this Subcontract, shall not be allowed to the Subcontractor for any cause or under any circumstances unless the Subcontractor files a written claim therefore with Contractor within forty-eight (48) hours from the time of the beginning of the delay or the cause thereof.

11.3. Subcontractor shall at all times supply adequate tools, and equipment, a sufficient number of properly qualified workers and sufficient amount of materials and supplies of proper quality to prosecute said work efficiently and promptly, and in accordance with the schedule and sequence given it by Contractor from time to time. If in order to expedite the final completion of the work, Contractor requests Subcontractor to work overtime at a time when Subcontractor is not in default under any of the provisions of this Subcontract, Subcontractor agrees to work said overtime and it is understood that Contractor shall pay Subcontractor only the

Subcontractor's premium pay over the rate for regular time during the period of such overtime, including additional insurance and taxes incurred by Subcontractor with respect thereto. Time slips covering said overtime must be submitted to (Contractor's) authorized agent for checking and approval.

11.4. Subcontractor will coordinate its work with the work of Contractor, other subcontractors, and Owner's other builders, if any, so no delays or interference in the progress of the work of Contractor, other subcontractors, or other contractors of the Owner. The Subcontractor shall cooperate fully with all others working on the Project and shall not permit or commit any act which interferes with others so engaged.

## ARTICLE 12 Changes

12.1. Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to the sureties, make changes or alterations in the work covered by this Subcontract, whether such changes increase or diminish the work to be done hereunder. Any unilateral order or agreement under this Article shall be in writing. Subcontractor shall perform the work as changed without delay. All clauses in this Contract shall apply to any changes, omissions, or extra work in like manner and extent as work contracted for and no change, omission or extra work shall annul or invalidate this Subcontract or any part thereof. No such order of Contractor shall constitute a breach or abandonment of this Subcontract or any party thereof or justify a departure from the unit price schedule with respect to the original estimated quantities, irrespective of the nature, extent or amount thereof and no notice thereof need be given to the sureties.

12.2. Subcontractor shall submit any claims for adjustment in the price, schedule, or other provisions of the Subcontract claimed by Subcontractor for changes or for discrepancies in the Prime Contract to Contractor. Said claims shall be submitted in writing by Subcontractor in time to allow Contractor to comply with the applicable provisions of the Prime Contract. Contractor shall process said claims in the manner provided by and according to the provisions of the Prime Contract so as to protect the interest of Subcontractor and others including Contractor. Subcontract adjustments shall be made only to the extent that Contractor is entitled to relief from or must grant relief to Owner; and the recovery by Subcontractor for such work shall be conditioned upon a prior receipt of payment by Contractor from the Owner. Further, each Subcontract adjustment shall be equal only to Subcontractor's allocable share of any adjustment in Contractor's contract with Owner. Subcontractor's allocable share shall be determined by Contractor, after a deduction for the professional and counsel fees, cost and expenses incurred by Contractor in the collection of any such money, and after allowance of Contractor's normal overhead, profit, and other interest in any recovery by making a reasonable apportionment, if applicable, between Subcontractor, Contractor and other subcontractors or persons with interests in the adjustment. This paragraph shall also cover other equitable adjustments or other relief allowed by the Contract Documents.

12.3. If requested by Contractor, Subcontractor shall within seven (7) calendar days submit a reasonable price quotation for proposed changes. If Subcontractor does not and Contractor is required to submit a price quotation to Owner which includes a Subcontract charge, Contractor shall use its best estimate of the proposed changes as it affects the Subcontractor in its quotation to Owner, which estimate shall be the maximum equitable adjustment due to Subcontractor.

12.4. For changes ordered by Contractor independent of Owner or Prime Contract, Subcontractor shall be entitled to an equitable adjustment in the Subcontract price. The cost (except where determined by a schedule of unit prices forming part of this Contract) or time to be allowed or deducted shall be agreed upon in writing between the parties hereto. If no additional time or money is asked for within seven (7) calendar days following notice of any proposed change, it shall be construed that there is no additional price or time to be allowed; and in case any proposed change involved a deduction from the Subcontract price herein named, Contractor's estimate of same shall be accepted by the Subcontractor, should it fail to submit its own estimate within seven (7) calendar days following notice of such proposed change. If Contractor and the Subcontractor should not be able to agree as to the amount, either in consideration or time, to be allowed or deducted, it shall nevertheless be the duty of the Subcontractor, upon written notice from Contractor, to immediately proceed with such alteration or change and the determination of said amount and time shall be determined under Article 14.

## ARTICLE 13 Subcontractor's Failure to Perform

13.1. If, in the opinion of Contractor (and Contractor's finding and judgment with respect thereto shall be final and bind the Subcontractor absolutely), Subcontractor shall at any time (a) refuse or fail to provide sufficient properly skilled supervisory personnel or workers, equipment, or materials as required by the Prime Contract and suitable to Owner, Engineer, or Contractor, (b) fail in any respect to prosecute the work according to the current schedule, (c) cause, by an action or omission, the stoppage or delay of or interference with the work of Contractor or of any other builders or subcontractors, (d) fail to comply with all provisions of the Subcontract or the Prime Contract, (e) abandon said work or any part thereof, (f) fail to promptly pay for all labor, material or everything else used in connection with this Subcontract, or fail to provide evidence of such payment, (g) the principal owner of Subcontractor shall die or otherwise become physically or mentally disabled, (h) fail to provide any requested payment or performance bonds or to maintain insurance or provide proof of insurance as required by this Subcontract, (i) have a petition in bankruptcy or for an arrangement of creditors be filed by or against Subcontractor, make a general assignment for the benefit of its creditors, or commit any act of bankruptcy, (j) have a receiver appointed, or (k) become insolvent or a debtor in reorganization proceedings, then, after three (3) days' written notice, unless the condition specified in such notice shall have been eliminated within three (3) days, Contractor at its option without voiding the other provisions of this Subcontract and without notice to the sureties, may (i) take such steps as are

necessary to overcome the condition, in which case the Subcontractor shall be liable to Contractor for the cost thereof, (ii) withhold any further payment hereunder from Subcontractor until all work to be performed by Subcontractor shall be wholly finished, (iii) provide or have others provide such materials, supplies, equipment and labor in addition to any supplied by Subcontractor, as may be necessary to complete Subcontractor's work and pay for the same and deduct the amount thereof from any money which is then or would thereafter otherwise be due Subcontractor, (iv) pay for all of the same and deduct the amount so paid from any money which is then or would thereafter otherwise be due Subcontractor, (v) bar Subcontractor from the Project (with or without terminating the Subcontract), (vi) enter upon the premises and take possession for use and consumption in completing the work of all the materials, supplies, tools, equipment, appliances, facilities, records and shop drawings of the Subcontractor thereon or thereat and complete the work, or have the same completed by others, or any combination of such methods, (vii) terminate the Subcontract for default, or (viii) seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor or Owner.

13.2. In the event of termination for default, Contractor, may, at its option, (a) enter on the premises and take possession, for the purpose of completing the work, all materials, supplies, tools, equipment, appliances, facilities, records and shop drawings of Subcontractor, (b) require Subcontractor to assign to Contractor any or all of Subcontractor's contracts and purchase orders involving the Project, and (c) either itself or through others complete the work, by whatever method Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the work shall be fully completed and accepted by Owner. At such time, if the unpaid balance of the price to be paid shall exceed the cost, expense, and damages incurred by Contractor (including attorney's fees) such excess shall be paid by Contractor to Subcontractor. If such costs, expenses, and damages due Contractor shall exceed such unpaid balance, then Subcontractor or its sureties or both shall pay Contractor the difference promptly after Contractor's demand, and upon their failure to do so, in addition to Contractor's rights on or under any bonds of the Subcontractor, Contractor shall have the right, pursuant to the lien provided for herein, to sell all materials, tools, appliances, equipment and facilities of Subcontractor not previously used or consumed in the performance of said work and to apply the proceeds of such sale(s) to the obligation of Subcontractor and its sureties who nevertheless shall remain liable for any deficiency. Contractor shall not be required to exercise any such lien rights as a condition to receiving full payment from Subcontractor, its sureties or both of them.

13.3. In the event of the exercise of any default rights by Contractor as set forth above, all cost incurred and monies expended to fulfill the obligations of Subcontractor, including but not limited to, the cost of materials, labor, subcontractors, transportation, equipment expense and rentals thereof, supplies, services, insurance, taxes, appliances, tools, teams, utilities, power used or consumed, supervision, administration, job overhead, travel, legal and accounting fees and expenses, Contractor's general overhead as allocated to the work and other costs and expenses incurred or sustained by Contractor, plus a sum equal to ten (10%) percent of the actual cost of the work performed as set forth as well as the amount of all claims against Subcontractor paid by Contractor shall be deducted from the Subcontract price and sums otherwise due Subcontractor. Contractor shall be entitled to interest on the deficiency at the then prevailing prime rate plus two percent (2%).

13.4. If Contractor wrongfully exercises any option under 13.1 above, Contractor shall be liable to Subcontractor for the reasonable value of work performed by Subcontractor prior to Contractor's wrongful action plus in the case of a wrongful termination for default, reasonable closeout costs less prior payments made. The Subcontractor's remedy under this Article 13.4 shall be exclusive. Nothing herein shall bar withholdings by Contractor omitted by other provisions of this Subcontract.

#### **ARTICLE 14** **Settlement of Disputes**

14.1. Subcontractor agrees to be bound to Contractor on any decision concerning the work, or termination thereof, the quantity or classification of anything done hereunder, the intentment or application of the Prime Contract or claims for payment or compensation thereunder in respect of work done or omitted hereunder which is binding upon Contractor, to the same extent that Contractor is bound to Owner, by the terms of the Prime Contract, and by any and all preliminary and final board decisions or determinations made thereunder by the party, board or court so authorized in the Prime Contract or by law, whether or not Subcontractor is a party to such proceedings. In case of a dispute, Subcontractor will comply with all provisions of the Prime Contract and allow a reasonable time for Contractor to analyze and forward to Owner any required communications or documentation. Contractor will, at its option, (1) present to Owner, in Contractor's name, or (2) authorize Subcontractor to present to Owner, in Contractor's name, all of Subcontractor's work, whenever Contractor is permitted to do so by the terms of the Prime Contract. Contractor will further invoke on behalf of Subcontractor, or allow Subcontractor to invoke, those provisions in the Prime Contract for determining disputes. If such dispute is prosecuted or defended by Contractor, Subcontractor agrees to furnish all documents, statements, witnesses, and other information required by Contractor, and to pay or reimburse Contractor for Subcontractor's allocable share of costs incurred in connection therewith. The Subcontract price shall be adjusted by Subcontractor's allocable share determined in accordance with Article 12 hereof. The Subcontractor agrees to exhaust the remedies available under the Prime Contract, including remedies available for breach of contract, through Contractor and to make the demand upon Contractor timely before any separate action shall be instituted. Subcontractor agrees that its failure to make demand upon Contractor to present its claims, in (Contractor's) name, to the Owner, constitutes a complete waiver of any and all such claims and causes of action of Subcontractor against Contractor. If a separate action is instituted prior to the exhaustion of the aforesaid remedies, the Subcontractor agrees to cause said action to be stayed pending the exhaustion of remedies against the Owner. Subcontractor also agrees to be bound to Contractor to the same extent Contractor is bound to Owner by the final decision of a court of competent jurisdiction or other tribunal or panel whether or not Subcontractor is a party to such proceeding.



14.2. Contractor may dispute, appeal from and every manner resist and litigate any and in every decision on claims or disputes with the Owner before such decision shall be a final determination and without being deemed thereby to have admitted any obligation or liability to Subcontractor, and if the decision shall go against Contractor then Subcontractor in addition to being bound and concluded thereby, hereby further agrees that nothing previously said, done, contended or stipulated by Contractor in or with respect to any such dispute, litigation and appeal shall be offered or received in evidence in any proceeding of Subcontractor against Contractor. In any and all events the prosecution of any such claim shall be at the risk of Subcontractor, and Contractor shall have no responsibility or liability for or in relation to the outcome thereof, except to make such payment to Subcontractor of any sums received from the Owner on the successful presentation of such claim, less all expenses and fees allowed herein to Contractor in connection therewith.

14.3. With respect to any controversy between Contractor and Subcontractor not involving Owner or the Prime Contract, Contractor shall issue a decision that shall be followed by Subcontractor, without interruption, deficiency, or delay. If the Subcontractor is correct as to the controversy, Subcontractor shall be entitled to an equitable adjustment in the contract price as its sole remedy. Notification of any such claim for equitable adjustment must be asserted in writing within ten (10) days of Subcontractor's knowledge of the claim. No action shall be maintained against Contractor upon any claim by Subcontractor whether or not arising out of or based upon this Subcontract, or by reason of any act, omission, or requirement unless commenced within thirty (30) days after the last work was performed, or the last material furnished under this Subcontract, or from any alleged breach of this Agreement, or from the date of any act or omission forming the basis of such claim, whichever occurs first.

14.4. Notwithstanding any other provisions of the Contract Documents to the contrary, in no event shall Contractor be required to submit to arbitration any claim, dispute, or other matter in question between Contractor and Subcontractor arising out of or relating to this Subcontract Agreement or the Contract Documents except claims against the Owner that are required to be submitted to arbitration by the Prime Contract.

## ARTICLE 15 Warranty

15.1. Subcontractor warrants its work hereunder to Contractor on the same terms, and for the same period, as Contractor warrants the work to Owner under the Prime Contract; and, with respect to Subcontractor's work, Subcontractor shall perform all warranty obligations and responsibilities assumed by Contractor under the Prime Contract and Subcontractor shall protect Contractor from any liability thereon. In addition thereto, if anything done or furnished hereunder by or for the Subcontractor shall fail in use or operation within the warranty or guarantee period set forth in the Prime Contract or one year from the date of Owner's final acceptance of the completed Project, whichever is latest, Subcontractor unconditionally warrants and guarantees all labor, material and services employed and furnished by or to it in performing the work. Subcontractor agrees promptly to amend and make good, upon demand by Contractor or Owner, and at Subcontractor's expense, any and all defects due to imperfect workmanship, materials or damages resulting therefrom, to the entire approval and acceptance of Contractor, Owner or Architect or their authorized representatives. The obligations set forth in this paragraph are continuing and shall survive completion of the construction Project and acceptance of work; making final payment to Subcontractor shall not relieve Subcontractor of its obligations and liabilities hereunder. Subcontractor shall not be entitled to final payment hereunder until Subcontractor furnishes Contractor his written guarantee setting forth and confirming the above responsibilities and liabilities.

## ARTICLE 16 Liens

16.1. Subcontractor shall turn the work over to Contractor in the condition required by the Prime Contract and to the satisfaction of the Owner, Architect and Contractor, free and clear of all claims, encumbrances or liens and shall protect, defend, save harmless, and indemnify Contractor from all loss, cost, damage, liability and expense incurred or sustained by Contractor in connection with or by reason of any claim, encumbrance or lien arising out of the Subcontractor's performance of this Subcontract. In the event that a lien is filed by anyone in relation to the labor and/or material being furnished by Subcontractor, Subcontractor agrees to have the same discharged, by posting a bond with the appropriate authorities, or otherwise, within ten (10) days of the notice thereof. In the event such lien is not so discharged, Contractor shall have the right to terminate this Subcontract for default, and/or bond-off said lien(s) and recover from Subcontractor all costs incurred as a result thereof, including bond premiums and attorney's fees.

16.2. Prior to final payment, Subcontractor shall provide to Contractor a release of its liens and claims and all liens and claims of all persons furnishing labor and/or materials for the performance of this Subcontract, and satisfactory evidence that there are no other liens or claims whatsoever outstanding against the work.

16.3. If required by Contractor, Subcontractor shall furnish partial releases and waivers of liens and claims from Subcontractor and Subcontractor's subcontractors, suppliers, materialmen and creditors on labor, material, equipment, and supplies.

16.4. The Subcontractor shall furnish, if requested by Contractor, sworn affidavits from time to time in accordance with the form provided by Contractor, which shall state amounts due or to become due, amounts paid, and any other information clearly to indicate the financial condition of the Subcontractor in so far as it relates to labor, material, equipment and supplies furnished and to be furnished under this Subcontract; and the Subcontractor agrees to pay as they accrue, and to protect, defend, indemnify and hold Contractor harmless against any and all liens and claims of persons claiming to have performed labor or to have furnished material,

equipment, supplies, appliances, insurance, or services in connection therewith. If at any time there shall be any lien or claim against the Subcontractor or Contractor which, if established, might make Contractor directly or indirectly liable or responsible, then Contractor may retain out of any money due or to become due the Subcontractor an amount sufficient to indemnify Contractor against liability or loss by reason of such lien or claim, including the reasonable costs and attorney fees of any litigation thereunder, until the same shall be effectively satisfied, discharged or cancelled; and in addition thereto Contractor may take such other steps as it may deem necessary to protect itself against any claims including paying and satisfying all such claims. If at any time Contractor shall determine that the Subcontractor's financial condition is such that in the opinion of Contractor the ability of the Subcontractor to complete said Subcontract and all requirements hereof is or may be impaired, the Subcontractor shall furnish security to the satisfaction of Contractor within three (3) days after written notice and if Subcontractor defaults in furnishing such security, Contractor shall have the option to terminate this Subcontract for default by the Subcontractor.

#### **ARTICLE 17** Inspection and Acceptance

17.1. Subcontractor shall provide appropriate access and facilities at all reasonable times for inspection by Contractor or Owner of the work and materials provided under this Subcontract, whether at the Project site or at any place where such work or materials may be in preparation, manufacture, storage or installation. Subcontractor shall, at Subcontractor's expense, promptly replace or correct any work or materials that Contractor or Owner shall reject as failing to conform to the requirements of this Subcontract. Subcontractor shall replace and repair all other parts of said Project and of the contents thereof which may have been damaged or moved as the result of any such defect and to effect such replacement all at Subcontractor's own cost and expense and to the satisfaction of the Owner, Architect and Contractor. If the Subcontractor does not replace or correct defective work or materials within a reasonable time, Contractor shall have the right to do so and Subcontractor shall be liable to Contractor for the cost thereof, plus (Contractor's) markup to cover supervision, insurance, further overhead and profit. If, in the opinion of Contractor, it is not expedient to correct or replace all or any part of rejected work or materials, then Contractor, at its option, may deduct from the payments due, or to become due, to Subcontractor, such amount as, in Contractor's reasonable judgment, will represent (i) the difference between the fair value of the rejected work and materials and the value thereof if complied with this Subcontract, or (ii) the cost of correction, whichever is higher.

17.2. Subcontractor's remedy for wrongful rejection of work pursuant to Article 17.1. shall be limited to Contractor's remedy under the Prime Contract if rejection is by the Owner or by Contractor at request of Owner. Contractor shall be liable for any increased costs caused by its wrongful rejection of work if the Owner was not involved in said rejection.

17.3. The work shall be accepted according to the terms of the Prime Contract. However, unless otherwise agreed in writing, entrance and use by Owner or Contractor, shall not constitute acceptance of the work.

#### **ARTICLE 18** Inconsistencies and Omissions

Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of Subcontractor to so notify Contractor in writing. Upon receipt of said notice, Contractor shall instruct Subcontractor as to the measures to be taken, and Subcontractor shall comply with Contractor's instructions. Nothing herein shall bar Subcontractor's right to seek adjustment under Article 12.2. if allowable under Prime Contract.

#### **ARTICLE 19** Termination for Convenience

Contractor shall have the right to terminate this Subcontract for its own convenience for any reason by providing Subcontractor with a written notice of termination, to be effective upon delivery to Subcontractor. A termination for default shall, if wrongfully made, be treated as a termination for convenience under this article. If the Subcontractor is terminated for convenience under this article, Subcontractor shall be entitled to [the actual, direct costs of all labor and material expended on the job prior to the effective date of the termination plus a sum equal to six (6%) percent of all such labor and material to cover overhead and profit or Subcontractor shall be entitled to be paid a pro-rata percentage of the total Subcontract price that is equal to its percent of completion, whichever of the two methods provides the lowest sum to be paid to the Subcontractor.] In no event shall Subcontractor be entitled to recover (a) anticipatory profits or damages; (b) to assert a claim in quantum meruit or any other measure of damages other than that stated herein; or (c) to receive a sum in excess of what Owner pays to Contractor for such work of Subcontractor up to the date of termination. Subcontractor's remedy under this Article 19 shall be exclusive.

#### **ARTICLE 20** Approvals

20.1. Subcontractor warrants and agrees that it can and will obtain all requisite approvals from Owner as to its eligibility to serve as a subcontractor, and the approvals of all materials and performance of the work as required by the Contract Documents.

20.2. Subcontractor shall deliver to Contractor copies of shop drawings, cuts, samples and materials lists required by Contractor or the Contract Documents within sufficient time so as not to delay performance of the Project or within sufficient time for Contractor to submit the same within the time stated in the Prime Contract, whichever is earlier. Any deviation from the Prime

Contract shall be clearly identified on shop drawings. Notwithstanding any general approval granted by Contractor or Owner, all work shall be in accordance with the Prime Contract. Any handling, transmittal, approval or anything else done by Contractor or others with respect to these shall not relieve Subcontractor from responsibility for errors in the samples, shop drawings, tests or other data and shall not relieve Subcontractor of its obligations to perform its work in accordance with this Subcontract and of its responsibilities for any deviations from the requirements of this Subcontract.

**ARTICLE 21**  
Clean Up

Prompt and ongoing clean up and removal from the Project site of Subcontractor's waste materials, refuse and dirt will be the full and absolute responsibility of Subcontractor. Subcontractor shall do all cutting and patching necessary to make its work match that of other trades and shall make good its work after them. At the completion of its work on this jobsite, Subcontractor shall promptly remove its equipment and any debris caused by the performance of its work. If Subcontractor fails its obligations under this Paragraph, after having received twenty-four hours notice from Contractor that Subcontractor's obligations are not being properly prosecuted, then such clean up work may be performed or caused to be performed by Contractor and the expense thereof charged to Subcontractor and Contractor may, at its discretion, offset such charges against amounts which would otherwise be due and payable to Subcontractor hereunder.

**ARTICLE 22**  
Damage During Construction

In the event Subcontractor's work is damaged by other trades, Subcontractor is to immediately notify Contractor in writing of the damage, the name of tradesman or subcontractor causing the damage and the cost of making repairs. It will be Subcontractor's obligation to resolve the costs of repairs of said damage with the responsible subcontractors. Contractor shall have the power of final arbitration in these matters. Work shall continue pending resolution of the dispute and Contractor can withhold payments pending such resolution.

**ARTICLE 23**  
Assignment and Subcontracting

23.1. Subcontractor shall not assign or sublet this Subcontract or any part thereof without the prior written consent of Contractor. No such assignment shall be binding on Contractor unless and until accepted in writing by Contractor. In the event an assignment or transfer is made, with or without the prior consent of Contractor, Subcontractor shall not be relieved from responsibility or liability to Contractor under the Subcontract.

23.2. Subcontractor shall not assign, in any manner, or at any time, funds accrued or to accrue under this Subcontract without prior written consent of Contractor. No assignment shall be binding on Contractor unless and until accepted in advance and in writing by Contractor.

23.3. Subcontractor must submit to Contractor, for prior written approval, all proposed lower-tier subcontractors (sub-subcontractors), and Contractor may reject any proposed sub-subcontractor. Approval of a sub-subcontractor will not imply that Contractor assumes any responsibility for such sub-subcontractor or that Subcontractor is relieved of any responsibility with respect to the Subcontract Work. In the event of prior written Contractor approval of a sub-subcontractor, Subcontractor shall cause each such sub-subcontractor to procure the insurance coverages required under Article 6 of the Subcontract, or otherwise covering such liabilities under policies in form, and in amounts and with insurance companies, all as acceptable to Contractor. Subcontractor will obtain said policies or certificates thereof and deliver them to Contractor upon Contractor's request. If evidence of acceptable sub-subcontractor insurance is not acquired by Subcontractor, Contractor may acquire the required insurance coverages and deduct payments therefore from amounts then or subsequently owing to Subcontractor hereunder.

**ARTICLE 24**  
Patents and Royalties

Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the work. Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against Contractor, or Owner arising out of the work, and shall be liable to and indemnify Contractor and Owner for all loss, including all costs and expenses, on account thereof.

**ARTICLE 25**  
Taxes and Permits

Except as otherwise provided by the Contract Documents, Subcontractor agrees to pay and comply with, indemnify and hold Contractor harmless against the payment of all contributions, taxes or premiums which may be payable by it under Federal, state or local laws arising out of performance of this Subcontract, and all sales, use, or other taxes of whatever nature levied or assessed against Owner, Contractor, or Subcontractor arising out of this Subcontract, including any interest or penalties. Subcontractor waives any and all claims for additional compensation because of any increase in the aforementioned taxes unless payment for said increase is specifically provided for in the Contract Documents. Subcontractor shall obtain and pay for all permits, licenses, fees and certificates

of inspection necessary for the prosecution and completion of its work, and shall arrange for all necessary inspections and approvals by public officials. If Contractor pays any such taxes, contributions, interest or penalties, Subcontractor on demand shall reimburse Contractor or Contractor may deduct the same from sums otherwise due Subcontractor.

**ARTICLE 26**  
Laws, Regulations and Ordinances

Subcontractor agrees to be bound by, and at its own cost, comply with all Federal, state and local laws, codes, ordinances and regulations applicable to this Subcontract and the performance of the work hereunder whether by reason of general law or by reason of provisions in the Prime Contract. Subcontractor shall be duly licensed to operate under the law of the applicable jurisdictions. Subcontractor agrees to protect, defend, indemnify, and hold harmless Contractor with respect to all such laws, orders and directives.

**ARTICLE 27**  
Health and Safety

The Subcontractor agrees to abide by all safety rules, practices and programs as established by the Prime Contract, Owner and Contractor. Subcontractor and all employees and agents thereof shall comply with the applicable requirements issued pursuant to the Occupational Safety and Health Act of 1970, as amended, and all other applicable health and safety laws and regulations. Subcontractor shall be liable to Contractor and Owner for all loss, costs and expense attributable to any acts of commission or omission by Subcontractor, its employees and agents resulting from its failure to comply therewith including, but not limited to, any fines, penalties or corrective measures.

No alcoholic beverages, illegal drugs, or firearms are allowed on-site. Anyone under the influence of alcohol or drugs will be asked to leave the jobsite.

**ARTICLE 28**  
Labor

28.1. Subcontractor shall comply with, observe and confirm to the wage scales and labor policies of Contractor and be bound by all terms and provisions of any collective bargaining agreements executed by Contractor, specifically including the terms and provisions of any such agreements providing for hiring and union-security and for the making of payments into or under health and welfare or other fringe benefit funds or plans, to the extent that the terms and provisions of such agreements can legally be applied to the work to be done hereunder. Subcontractor and its lower-tier subcontractors shall not employ anyone in subcontract work whose employment may be objected to by Contractor or Owner or violates any such labor agreements. Subcontractor agrees that if any portion of such work is further subcontracted, such further subcontractor shall be contractually obligated to be bound by and observe the terms and provisions of such collective bargaining agreements to the same extent as is herein required of Subcontractor, and that an express provision imposing such obligation upon the further subcontractor shall be included in any such further Subcontract.

28.2. Should any workers performing work covered by this Subcontract engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, said circumstances shall be deemed a failure to perform the work on the part of the Subcontractor subject to the conditions and terms set forth in Article 13 above.

**ARTICLE 29**  
Equal Opportunity

29.1. In connection with the performance of work under this Subcontract, Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, color or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subcontractor agrees to post notices in conspicuous places, available for employees and applicants for employment, prepared by Subcontractor, and approved by the government when required, setting forth the provisions of this Article.

29.2. Subcontractor shall permit access to its books, records, and accounts by representatives of Contractor or Owner for purposes of investigation to ascertain compliance with the provision of this Article.

29.3. In the event Subcontractor's noncompliance with the equal opportunity provisions of this Subcontract, this Subcontract may be terminated for default.

29.4. Subcontractor shall include the provisions of this Article, in every lower-tier subcontract and purchase order. The requirement of this Article shall be in addition to any Equal Opportunity provisions of the Prime Contract.

**ARTICLE 30**  
Information Required by Owner

In addition to the information to be provided by Subcontractor pursuant to other provisions of this Subcontract, Subcontractor hereby agrees to provide on behalf of itself and its subcontractors and suppliers, at no additional cost to Contractor, and in a prompt

and timely fashion so as not to disrupt the performance of this Subcontract or the contract between Contractor and Owner, any and all additional information relating to this Subcontract which is required either by the Prime Contract, the Owner, Contractor or by law. Subcontractor shall protect, indemnify and hold harmless Contractor for all loss, costs, damages, expenses and liabilities because of any failure to submit timely and properly any such data or because of defective, incomplete, inaccurate or improper data.

#### **ARTICLE 31**

##### **Privity**

Until the Project is fully completed, Subcontractor agrees not to perform any work directly for Owner or any of its tenants or deal directly with Owner's representatives in connection with the Project, unless otherwise directed in writing by Contractor. All work for this Project performed by Subcontractor shall be processed and handled exclusively by Contractor.

#### **ARTICLE 32**

##### **Notices**

Written notice shall be considered as delivered to Subcontractor when delivered to an employee of the Subcontractor or when postmarked if mailed to the address of the Subcontractor set out herein, or when telefaxed to an office of the Subcontractor, or when received in all other cases. All notices to Contractor shall be addressed to Contractor at the address set out herein, and shall be considered as delivered when received by Contractor.

#### **ARTICLE 33**

##### **Severability and Waiver**

The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of Contractor, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Waiver of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.

#### **ARTICLE 34**

##### **Interpretation of Documents**

34.1. Although drawn by Contractor, this Subcontract shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party. Clauses of the Prime Contract required to be inserted in this Subcontract are deemed to be in part hereof whether or not they are attached hereto or inserted herein.

34.2. It is the intention of the parties that all terms of this Subcontract are to be considered as complementary. However, in the event that such an interpretation is not possible, the order of precedence of the documents forming this Subcontract shall be (1) modification of any documents forming part of this Subcontract; (2) this Subcontract, unless the Prime Contract impose a higher standard or greater requirement on Subcontractor, in which case the Prime Contract prevail; (3) the Prime Contract, unless the provisions of (2) apply.

34.3. In the event of a conflict between or among modifications, the later in date shall prevail; in the event of a conflict between or among the terms of this Subcontract, the higher standard or greater requirement for Subcontractor shall prevail; and in the event of a conflict between or among the terms of the Prime Contract, the higher standard or greater requirements for Subcontractor shall prevail.

#### **ARTICLE 35**

##### **Additional Provisions**

35.1. All closeout documents required by the specifications are due to Contractor no later than 30 days after Substantial Completion. For each day past the Date of Substantial Completion that closeout documents have not been received, or are incomplete, Subcontractor shall be assessed \$200.00.

35.2. In accordance with the provisions of Article 26 of the Standard Form of Agreement between Contractor and Subcontractor, all Federal, State, and Local laws must be followed during the course of the project. These laws and regulations include items specific to the employ of legal workers.

See attached Exhibits for additional conditions of this Subcontract.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have hereunto executed this Subcontract, on the day and year above written.

For: **PROSSER WILBERT CONSTRUCTION INC**  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: **Overland Park Mechanical Co LL**  
By: John J. Colichio John Colichio  
Title: Controller  
Date: 2/21/24

**EXHIBIT ' A ' DRAWINGS AND REVISIONS TO DRAWINGS**Revised 01/16/24

DRAWING NUMBER	DRAWING TITLE	DATE	REVISION NUMBER/ISSUE
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Sheet #	Sheet Title	Drawing Date	Revision Number/Issue
G-001	COVER SHEET	01/19/24	ADD-1
C1.0	COVER SHEET – FINAL DEVELOPMENT PLANS FOR Lot 13A OF WEST PRYOR	01/16/24	PER EVERGY
C2.0	EXISTING CONDITIONS	11/29/23	CITY COMMENTS
C3.0	SITE PLAN	01/04/24	PER CLIENT
C4.0	UTILITY PLAN	01/04/24	PER CLIENT
C5.0	GRADING PLAN	01/16/24	PER EVERGY
C6.0	EROSION CONTROL PLAN	01/04/24	PER CLIENT
C7.0	EROSION CONTROL DETAILS	11/29/23	CITY COMMENTS
C8.0	STORM LINE C & E PLAN AND PROFILE	01/04/24	PER CLIENT
C8.1	STORM LINE F PLAN AND PROFILE	01/04/24	PER CLIENT
C9.0	WATERLINE A PLAN PROFILE	01/04/24	PER CLIENT
C10.0	WATERLINE B & C PLAN AND PROFILE	01/04/24	PER CLIENT
C11.0	DETAILS	11/29/23	CITY COMMENTS
C12.0	DETAILS	11/29/23	CITY COMMENTS
C13.0	DETAILS	11/29/23	CITY COMMENTS
L-1	LANDSCAPE PLAN	01/16/24	PER EVERGY
C-1.0	COVER SHEET – SANITARY WEWER PLANS FOR LOT 13A OF WEST PRYOR	1/3/24 SEAL	PERMIT SET
C-2.0	EXISTING CONDITIONS	1/3/24 SEAL	PERMIT SET
C-3.0	SITE PLAN	1/3/24 SEAL	PERMIT SET
C-4.0	SANITARY LINE A – PLAN AND PROFILE	1/3/24 SEAL	PERMIT SET
C-5.0	DETAILS	1/3/24 SEAL	PERMIT SET
C-6.0	DETAILS	1/3/24 SEAL	PERMIT SET
A-100	SITE PLAN	12/27/23	PERMIT SET
A-101	FIRST FLOOR PLAN	12/27/23	PERMIT SET
A-102	ROOF PLAN	01/19/24	ADD-1
A-201	EXTERIOR ELEVATIONS	12/27/23	PERMIT SET
A-202	EXTERIOR ENLARGED ELEVATIONS & FD	12/27/23	PERMIT SET
A-301	WALL SECTIONS	12/27/23	PERMIT SET
A-302	WALL SECTIONS	01/19/24	ADD-1
A-501	BUILDING DETAILS	01/19/24	ADD-1
A-502	BUILDING DETAILS	01/19/24	ADD-1
A-503	BUILDING DETAILS	01/19/24	ADD-1
A-601	GLASS & DOOR SCHEDULES	12/27/23	PERMIT SET
S-001	GENERAL NOTES	12/27/23	PERMIT SET
S-101	FOUNDATION PLAN	12/27/23	PERMIT SET
S-102	CANOPY FOUNDATION & FRAMING PLANS	01/19/24	ADD-1
S-103	WALL FRAMING PLAN	01/19/24	ADD-1
S-104	ROOF FRAMING PLAN	12/27/23	PERMIT SET
S-201	NW FRAMING ISOMETRIC	01/19/24	ADD-1
S-202	SE FRAMING ISOMETRIC	01/19/24	ADD-1

**Construction Specification****GENERAL CONDITIONS EXHIBIT A**

<b>S-301</b>	<b>CONCRETE DETAILS</b>	<b>12/27/23</b>	<b>PERMIT SET</b>
<b>S-601</b>	<b>FRAMING DETAILS &amp; SECTIONS I</b>	<b>12/27/23</b>	<b>PERMIT SET</b>
<b>S-602</b>	<b>FRAMING DETAILS &amp; SECTIONS II</b>	<b>01/19/24</b>	<b>ADD-1</b>
<b>S-603</b>	<b>FRAMING DETAILS &amp; SECTIONS III</b>	<b>12/27/23</b>	<b>PERMIT SET</b>
<b>ME-101</b>	<b>MEP NOTES &amp; SPECIFICATIONS</b>	<b>12/27/23</b>	<b>PERMIT SET</b>
<b>M-101</b>	<b>PLUMBING PLAN</b>	<b>12/27/23</b>	<b>PERMIT SET</b>
<b>M-201</b>	<b>HVAC PLAN</b>	<b>12/27/23</b>	<b>PERMIT SET</b>
<b>M-301</b>	<b>MECHANICAL DETAILS &amp; SCHEDULES</b>	<b>01/19/24</b>	<b>ADD-1</b>
<b>E-101</b>	<b>POWER PLAN</b>	<b>12/27/23</b>	<b>PERMIT SET</b>
<b>E-102</b>	<b>ELECTRICAL DETAILS &amp; SCHEDULES</b>	<b>01/19/24</b>	<b>ADD-1</b>
<b>E-201</b>	<b>LIGHTING PLAN</b>	<b>12/27/23</b>	<b>PERMIT SET</b>
<b>E-202</b>	<b>SITE LIGHTING PLAN</b>	<b>01/19/24</b>	<b>ADD-1</b>
<b>E-203</b>	<b>SITE PHOTOMETRIC PLAN</b>	<b>01/19/24</b>	<b>ADD-1</b>



**EXHIBIT B**  
**SCOPE OF WORK**

1.0 SCOPE OF WORK

Furnish all labor, material and equipment necessary to complete the (SCOPE) work per plans, specifications and addenda. Includes all general requirements per Specification Section Division One (1) and all other related sections.

(CSI 15000-15999)

**SCOPE**

This subcontract scope includes the supply and installation of the following general items of work:

1. Heat transfer equipment
2. Miscellaneous mechanical equipment as listed including associated equipment included in package
3. Refrigeration and air condition equipment
4. Refrigeration piping and related equipment

**RELATED SUBCONTRACT SCOPES**

The following subcontract scoped have work related to but not included in the work of this subcontract scope:

- 15250 Mechanical Insulation
- 15300 Fire Protection
- 15400 Plumbing
- 15501 Mechanical Piping
- 15551 Miscellaneous Mechanical Equipment
- 15650 Refrigeration
- 15851 Sheet Metal
- 15950 Controls
- 15990 Testing, Adjusting and balancing
- 16000 Electrical

**DEFINITIONS**

**Prewired Factory:** Packaged equipment, so specified under a specific Mechanical Scope, shall mean equipment in a completely electrically operable state after one final connection of power wiring; and remote control connections if specified.

**Automatic Temperature Controls:** Controls which must:

1. Be intended for equipment whose main purpose it o affect the temperature, ventilation, and/or humidity within a building, and
2. Produce these changes automatically, and
3. Include all items in the Automatic Temperature Control Scope

Provided, however, the controls do not directly switch the power lines to the equipment; the wiring o such controls to remain the responsibility under the electrical scope

**SPECIFIC SCOPE OF WORK**

Include/Exclude the following specific items in this subcontract scope regardless of where they appear in the bid documents:

	Included	Excluded
Specific inclusions as listed in the following subcontract scopes:		
a. 15250 Mechanical insulation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. 15300 Fire Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. 15400 Plumbing	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. 15501 Mechanical Piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. 15551 Misc. Mechanical Equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. 15650 Refrigeration	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. 15851 Sheet Metal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. 15950 Controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>

i. 15990 Testing, Adjusting and Balancing	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Starters not part of motor control center	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Core drilling for mechanical work	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Field applied insulation for		
a. Plumbing piping, vessels and equipment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Heating piping, vessels and equipment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Cooling piping, vessels and equipment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Refrigeration piping, vessels and equipment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Breeching, stacks, and furnace flues	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Emergency generator exhausts	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Insulation on outside of ducts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. In plenums	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Insulation finishes and weatherproofing	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Underground insulation conduits	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Permits as required under this subcontract scope	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Inspections as required under this contract scope	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Specific exclusions as listed in the following subcontract scopes;		
a. 15250 Mechanical insulation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. 15300 Fire Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. 15400 Plumbing	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. 15501 Mechanical Piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. 15551 Misc. Mechanical Equipment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. 15650 Refrigeration	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. 15851 Sheet Metal	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. 15950 Controls	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i. 15990 Testing, Adjusting and Balancing	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Winter protection after building is enclosed	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Site drainage facilities including storm sewers, catch basins, and manholes	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water lines (except fire protection line) gas lines, sanitary sewer line and storm sewer lines beyond five feet from bundling lines	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Septic tanks and leeching fields	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Irrigation systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cast-in-place concrete, rebar and formwork	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Concrete at underground duct work	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Concrete in inertia bases or housekeeping pads	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Catwalks, ladders, grating and associated supports unless specifies as part of the mechanical equipment package and indicated on Mechanicals Drawings	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Vapor barrier and insulation other than on mechanical systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Flashing, pitch pans, roof curbs with equipment and related waterproofing except counter flashings, lead flashings for roof drains, floor drains and vents that apply to this trade scope	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cutting in and installation of door grilles	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Surface finishing of mechanical work	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Toilet accessories	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Prefabricated coolers and freezers (for food service and similar equipment), and associated refrigeration equipment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ductless range hoods	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Electric wiring except as required by Division 15 subcontract scopes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Starters part of motor control center	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disconnects, multi-speed switches, protection switches, etc., other than that equipment which forms integral part of package unit requiring connection only	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fabrication or installation of wooden frost boxes.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Miscellaneous mechanical equipment from subcontract scope 15551 as appropriate for particular project (attach marked up 15551 list coordinated with subcontract scope 15851).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heating and chilled water, steam and condensate, condenser and glycol piping, equipment and components.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Special piping systems for other medical and laboratory used such as fuel oil, liquefied petroleum, lubricating oil and natural gas including piping, equipment and components	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Industrial and process piping, equipment and components	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Pipe covering protection saddles and shields	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Absorption and centrifugal chillers	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Refrigeration chillers, liquid and air condensing compete with interconnecting chilled water and condensate water piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Evaporation cooling towers, condenser water pumps, tanks and piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Hydronic solar heating and air conditioning systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Emergency generator waster, fuel, exhaust piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Underground fuel tank and liquid level gages or propane tanks for emergency generator	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Installation of fuel valves, strainers, day tank, and automatic fuel transfer equipment for emergency generator.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Non-potable heat transfer and water treatment systems and associated piping, meters, tanks, pumps and accessories	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Electrical heating boilers (exclude supply wiring)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Hot water unit heaters	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Humidifiers	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Air washers	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Flow measuring and control devices	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Direct reading temperature and pressure gauges connected directly to non-potable water systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Permanent catwalks, ladders and gratings related to mechanical systems, and are specified as part of mechanical equipment package and furnished by equipment manufacturer	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Steel bases and associated steel supports for mechanical equipment as indicated on Mechanical Drawings	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Isolation, bolts and metal frames for mechanical equipment bases	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Coil supports and hangers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fuel for testing only	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Permits, Warranties and training as specified in scope	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Special systems for medical and laboratory uses such as compressed air, distilled water, nitrous oxide, oxygen, and vacuum including piping, air compressors, vacuum pumps, regulators, equipment as accessories	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Refrigerant piping and related equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Remote reading gauges, transmitters and recorders for automatic temperature control	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Furnish fuel valves, strainers and day tank for emergency generator	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Furnish equipment for automatic fuel transfer for emergency generator	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Installing access panels	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heat pumps of every type	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Packaged self-contained air to air- and water-cooled air conditioning units	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Packaged heating and cooling units	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Self-contained heating, cooling, and ventilating units (unit ventilators), complete with all shelving, counters and accessories	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fuel fired unit heaters	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Packages, self-contained, air cooled, air condition units	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Refrigerated room air conditioners (window or wall type including air to air heat pumps)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Direct reading temperature and pressure gauges connected directly to refrigeration systems	<input checked="" type="checkbox"/>	

Refrigeration compressors, liquid receivers, thermal expansion valves, refrigerant piping, related control, direct expansion coils in built-up or add on systems, direct expansion fan coil units	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Evaporative condensers complete with interconnecting refrigeration piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Air cooled condensers complete with interconnecting refrigeration piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water cooled condensers complete with field installed interconnecting refrigeration piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Packaged self-contained integral D.X. fan coil compressor section for use with remote condensing section	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Refrigerated dew point controlled unites (Environment chambers)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ammonia brine refrigeration piping system for an ice arena or ice making plant	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Absorption and centrifugal chillers	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Refrigeration chillers, liquid air condensing complete with inter-connecting chilled water and condenser water piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Evaporative cooling towers, condenser water pumps, tanks and piping	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Packaged self-contained air to air- and water-cooled air conditioning units	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Remote reading gauges, transmitters and recorders for automatic temperature control	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Environmental Controls:		
a. Heating controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Ventilation controls	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Cooling control	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Humidification control	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Refrigeration control	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f. Motorized dampers when not specified as part of factory packaged equipment supplied to the job site for distribution and installation by others	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Control air compressor complete with accessories and isolation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Remote reading gauges, transmitters and recorders for automatic temperature control	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Building Centralization Control		
a. Centralized temperature, humidity, pressure and flow indication and recorders	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Centralizations of air condition, heating and ventilation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Building Life Safety Control and Equipment Safety Control:		
a. Operators and controls for motorized smoke dampers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Operators and controls for motorized fire dampers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Firestats	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Freeze protection thermostats	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Shut-down safety devices forming part of automatic temperature control	<input checked="" type="checkbox"/>	<input type="checkbox"/>
General Items:		
j. Permits as required for work under this subcontract scope	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k. Inspections as required under this subcontract scope	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l. Electrical thermostats intended for automatic temperature controls complete with subbases or adapter plates to mount on standard electrical box	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m. Remote reading gauges, transmitters and recorders for automatic control	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n. Supply only of access doors when specifically required for access to automatic temperature control equipment only	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o. Control wiring and/or air piping required for all automatic temperature controls supplied under the subcontract scope	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wiring for:		
a. Remote thermostats and remote prewired auxiliary control panels for packaged equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Boiler feedwater control wiring	<input type="checkbox"/>	<input checked="" type="checkbox"/>

c. The magnetic starter coil and relay coils supplied under subcontract scope 16000 and intended for Automatic Temperature Controls, including interlocking between starters and/or relays when controlled automatically	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Motorized dampers; when specified as integral part of packaged equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Automatic temperature controls; when specified as integral part of packaged equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Electrical wiring for thermostats and control which directly switch the power line to the equipment ("directly" shall mean not through magnetic coil)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Power wiring as outlined in 16000	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Control power supply outlet as outlined in 16000	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fire alarm, fan shut-down, relays and wiring	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Manually started control wiring.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Filter gauges directly connected to duct systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Balancing air systems	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Balancing hydronic systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Plugging of air taps	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Adjustments	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Balancing reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Replacement sheaves, belts thermal overloads, and equipment needed to make system perform to specifications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Training owner personnel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Install only, temperature control dampers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Manually operated balancing dampers	<input checked="" type="checkbox"/>	<input type="checkbox"/>

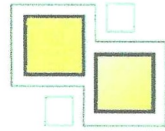
#### 1.1 GENERAL REQUIREMENTS

1. The Subcontractor further agrees as regards (1) the production, purchase and sale, furnishing and delivering, pricing, and use of consumption of materials, supplies and equipment; (2) the hire, tenure or conditions of employment of employees and their hours of work and rates of and the payment of their wages, and (3) the keeping of records, making of reports, and the payment, collection and/or deduction of Federal, State and local taxes and contributions, that it will keep and have available all necessary records and make all payments, reports, collections and deductions, and otherwise do any and all things so as to fully comply with all Federal, State and local laws, ordinances and regulations in regard to any and all said matters insofar as they affect or involve the Subcontractor's performance of this Subcontract, including but not limited to, the Occupational Safety and Health Act of 1970 as amended, Mine Safety and Health Act, Environmental Protection Agency laws and regulations of the Immigration Reform and Control Act of 1986 as amended, the Contract Work Hours and Safety Standards Act and the Americans With Disabilities Act of 1990 as amended. Subcontractor agrees to immediately remedy and condition causing a violation of any law, code, ordinance, regulation, etc., and shall defend and hold Contractor and Owner harmless from any penalty, fine or liability in connection therewith, including, but not limited to, any claims arising out of or related to the citizenship or work visa status of any employees or workers.
2. Each Subcontractor's Bid Package shall consist of the Bid Package – Scope of Work as identified below, the Project Specifications, the specification section (s) assigned, Addenda and the drawings in total. In addition, each Subcontractor shall be responsible for coordination of their work with related specification sections and Contract Documents in total.
3. Subcontractor is responsible to carefully coordinate his work with the Work of other Subcontractors to ensure efficient progress of the overall project. Time is of the essence in the execution of the Work; therefore, sufficient men, material and equipment must be provided by this Subcontractor to meet the job schedule.
4. Subcontractor is responsible for all field measurements for Subcontractor's Scope of Work.
5. Subcontractor shall follow all safety standards by OSHA and General Contractor. The Subcontractor agrees to abide by all safety rules, practices and programs as established by the Prime Contract, Owner and Contractor.

6. Provide all clean-up of material and debris associated with this work on a daily basis. Debris shall be placed in dumpsters provided by others.
7. Subcontractor shall provide drinking water for his own employees.
8. Subcontractor shall unload all materials covered under Subcontractor's Scope of Work and shall store materials under protective materials until required on site in locations designated by the Contractor's superintendent.
9. Subcontractor shall protect portions of his work likely to be damaged by the elements or other trades working in the area.
10. This project shall be staffed with Subcontractor's full-time on-site foreman while performing Subcontractor's work.
11. Provide layout and elevations for Subcontractor's Scope of Work from reference lines and benchmarks furnished by others.
12. Provide all scaffolding, hoisting, equipment, and rigging as required to perform all work covered under Subcontractor's Scope of Work.
13. The Subcontractor shall take particular care to support all ducts, piping and large or heavy equipment in a manner not to be injurious to the building and approved by the Engineer.
14. Subcontractor's work shall be executed with a level of quality and workmanship that is acceptable to the Contractor, Architect and Owner. Any work that is not acceptable is to be removed and replaced at the Subcontractor's expense.
15. Subcontractor is responsible for the control of air pollution caused by dust and dirt related to Subcontractor's work. Subcontractor is to comply with codes, ordinances and governing regulations regarding air pollution. Subcontractor is also responsible for all necessary steps required to maintain public streets and pavements clean of mud and dirt from vehicles and equipment used for this Subcontractor's work.
16. Subcontractor shall not interfere with normal traffic on roads, streets, walks, and other adjacent occupied or used facilities. Subcontractor shall provide traffic control devices and methods, alternate routes as required by codes, ordinances and governing regulations. Subcontractor is responsible for all permits and/or fees associated with traffic control or moving equipment.
17. Subcontractor shall only work within the hours as outlined in the City ordinances. Care must be taken not to disrupt the neighborhood during the evening and early morning hours.
18. Safety requirements, including netting, barricades, guardrails, etc. required by governing agencies for the protection of the Subcontractor's employees, shall be provided by the Subcontractor. In accordance with the Williams-Steiger Occupational Safety and Health Act of 1970, as set forth by the U.S. Department of Labor, this Subcontractor is responsible for all safety measures associated with this Scope of Work. Any penalties suffered by the Subcontractor for violation of this Act will be the sole responsibility of this Subcontractor and in no way shall the Contractor, Owner or Architect be held responsible for the Subcontractor's violation and/or penalties.
19. The Subcontractor shall advise the Contractor well in advance of progress of any access obstacles into the structure that would hinder the installation of components to be furnished hereto.
20. Subcontractor is responsible for location and protection of the existing utilities. It is this Subcontractor's responsibility to call "Dig-Safe", the local City agencies, and all utility companies to verify locations of utility lines within the construction limits.
21. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by one shall be binding as if required by all. Work not covered in the Contract Documents will not be required unless

consistent therewith and is reasonable inferred therefrom as being necessary to produce the intended results.

22. Subcontractor shall cooperate with the Contractor to provide information on hazardous materials furnished by Subcontractor to comply with OSHA regulation 29 C.F.R. 1926.59 (Hazard Communication Standard). Safety Data Sheets (SDS's) shall be provided for all chemical products furnished by the Subcontractor prior to material being delivered to the job site.
23. Subcontractor shall provide a Certificate of Insurance, Performance, Payment and Statutory Bonds as outlined in the Contract Documents prior to performing any work at the job site.
24. Provide approved ground fault circuit interrupters for all 120 volt single-phase 15 and 20 amp receptacle outlets on the construction site that are not a part of the permanent wiring or building structure and that are in use by job site employees. An adequate number of outlets will be provided to prevent cumulative leakage from several tools or leakages from extremely long circuits. The GFCI interrupters will interrupt a current when the leakage exceeds 5mA  $\pm$  1mA. The installation and equipment shall comply with all state, federal and local safety regulations.
25. Subcontractor shall be represented at each progress meeting, while work is proceeding by Subcontractor's on-site foreman familiar with the Contract Documents and authorized to make manpower and overtime commitments. If required by the Contractor, an office representative responsible for administering this Contract shall also attend each progress meeting.
26. Subcontractor shall comply with the Contractor's standard project workweek as designated by the Contractor's Superintendent.
27. The Subcontractor shall provide maintenance and warranty manuals, Owner orientation and operation instructions and as-built drawings as outlined in the Specifications.
28. In the event of any dispute or controversy between the Owner and Subcontractor, Subcontractor and Contractor or Subcontractor and Sub-Subcontractor arising under Subcontractor's Scope of Work, the Subcontractor shall diligently continue to prosecute the work, pending the resolution of such dispute or controversy and shall continue to be paid according to the Contract.
29. This Subcontractor shall work and coordinate with all other Subcontractors to establish routes, clearances and elevations of all piping, fittings, equipment and other materials to avoid conflict. Even with such cooperative and coordination efforts, should a conflict occur, the Contractor will be the final arbitrator and his decision will be final. The Subcontractor agrees to abide by such decision and make any changes required to eliminate such conflict without additional cost or expense to the Contractor and/or the Owner.
30. It is the policy of this Company to maintain a working environment that is both safe and conducive to high work standards. This Policy restricts certain items and substances from being brought onto or being present on the job-site and prohibits all jobsite personnel from working on the jobsite or from reporting for work with detectable levels of certain drugs and other substances.



**PROSSER | WILBERT**  
CONSTRUCTION, INC.  
GENERAL CONTRACTORS • CONSTRUCTION MANAGERS

**EXHIBIT C**  
**INSURANCE**

The following are minimum requirements for project Streets of West Prior Lot 13:

<b>General Liability:</b>	\$2 Million Aggregate \$1 Million/Occurrence
<b>Automobile:</b>	\$1 Million Combined Single Limit
<b>Worker's compensation/Employer's Liability:</b>	\$500,000 Each Accident \$500,000 Each Employee \$500,000 Policy Limit
<b>Umbrella:</b>	\$1 Million
<b>Certificate Holder:</b>	Prosser Wilbert Construction, Inc. 13730 W. 108 <sup>th</sup> Street Lenexa, KS 66215

**Description of Operations:**

Re: Streets of West Pryor Lot 13 Job 24-001 - Prosser Wilbert Construction Inc., Monarch Acquisitions LLC, as required by contract are named as Additional Insured on a primary and non-contributory basis including coverage for Products and Completed Operations.

Certificates of Insurance and endorsement can be emailed directly to Anita Coker, [acoker@prosserwilbert.com](mailto:acoker@prosserwilbert.com) and Tim Foster [tfoster@prosserwilbert.com](mailto:tfoster@prosserwilbert.com).





# CERTIFICATE OF LIABILITY INSURANCE

OP ID DR  
PROSS-1

DATE (MM/DD/YYYY)

08/18/10

<b>PRODUCER</b>  Thomas McGee, L.C. P.O. Box 419013 Kansas City MO 64141-6013 Phone: 816-842-4800 Fax: 816-472-5018	<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b>  Subcontractor's Name Subcontractor's Address	INSURER A: <b>Miscellaneous Companies</b>	
	INSURER B: <b>Miscellaneous Companies</b>	
	INSURER C: <b>Miscellaneous Companies</b>	
	INSURER D:	
	INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	SUBS POLICY NO & DATES			EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Per occurrence) \$ <b>1,000,000</b> MERCHANDISE (Per person) \$ <b>300,000</b> PERSONAL & ADV INJURY \$ <b>5,000</b> GENERAL AGGREGATE \$ <b>1,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b>
C		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	SUBS POLICY NO & DATES			COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b>  BODILY INJURY (Per person) \$  BODILY INJURY (Per accident) \$  PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B		<b>EXCESS / UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ <b>0</b>	SUBS POLICY NO & DATES			EACH OCCURRENCE \$ <b>1,000,000</b> AGGREGATE \$ <b>1,000,000</b>  \$ \$
C		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below OTHER	SUBS POLICY NO & DATES			WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ <b>100,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>100,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>500,000</b>

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

**RE: Name of Project. Prosser Wilbert Construction Co., the Owner and all other parties as required by contract are named as an additional insured on a primary and non-contributory basis including coverage for Products and Completed Operations. (See attached copy of additional insured endorsement)**

### CERTIFICATE HOLDER

**SAMPLE1**

Prosser Wilbert Construction  
 13730 W. 108th  
 Lenexa KS 66215

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL **30** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

## IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**SAMPLE**